

Appln. No. 09/785,700

Response dated Dec. 27, 2005

IBM Docket No. BOC9-2000-0017

Reply to Final Office Action of June 27, 2005

Docket No. 6169-156

REMARKS/ARGUMENTS

These remarks are made in response to the Advisory Action of September 29, 2005. The remarks are made in conjunction with the claim amendments presented herein and with the filing of Applicants' Request for Continued Examination (hereinafter RCE). This response is filed after the 3-month shortened statutory period, and as such, a retroactive extension of time is hereby requested. The Examiner is authorized to charge the appropriate extension fee and RCE fee to Deposit Account 50-0951.

In the Office Action of June 27, 2005 (hereinafter Office Action), the Examiner rejected claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,055,573 to Gardenswartz, *et al.* (hereinafter Gardenswartz) in view of U.S. Patent No. 6,611,811 to Deaton, *et al.* (hereinafter Deaton). The following addresses the rejections in the context of the claim amendments presented herein.

Applicants have amended independent Claims 1, 10, and 16 to emphasize certain aspects of Applicants' invention. Dependent Claims 2, 3, 6, and 17-24 have each been amended to maintain consistency with the claims on which they depend and to correct minor stylistic deficiencies. Claims 14 and 15 have been cancelled. The amendments are supported throughout the Specification, as discussed herein. (See, e.g., Specification, p. 19, lines 10-18; p. 10, lines 5-9; p. 11, line 21 - p. 12, line 6; p. 14, line 22 - p. 15, line 11; p. 21, lines 11-19; and p. 22, line 41 - p. 23, line 2.)

Claims 1-9

Applicants respectfully submit that Gardenswartz and Deaton, alone and in combination, fail to teach or suggest every feature of independent Claim 1, as amended. For example, neither reference teaches or suggests targeting consumers by identifying those consumers who have purchased at least one product, a related product, which is a complementary good in relation to a merchant-specified product, as recited in amended

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Claim 1. Accordingly, the references further fail to teach or suggest making promotional material corresponding to the merchant-specified product available to the identified consumers who have purchased at least one related, or complementary, good, as also recited in amended independent Claim 1.

Gardenswartz is directed to the delivery of "targeted advertisements" to a consumer based on the consumer's "offline purchase history." (Col. 2, line 58 - Col. 3, line; see also Abstract.) The targeted advertising of Gardenswartz includes the offering or a consumer a "value contract." Under Gardenswartz's value contract, a consumer receives price discounts or other rewards for certain "behavior" such as making a minimum number of purchases with a specified period. (Col. 3, line 61 Col. 4, line 4; see also Col. 14, lines 50-60.)

Gardenswartz describes three broad examples of "purchase behavior classification," such as whether a consumer is a "Brand Z loyalist," a "Heavy Snacker," or "Healthy Household." (Col. 9, lines 3-15.) Gardenswartz's broadly defined categories of consumer behavior, however, do not teach or suggest targeting consumers by identifying those consumers who have purchased at least one related product that is related to a merchant-specified product, as recited in amended Claim 1.

A related product is not identical or equivalent to the product to which it is related. (See, e.g., Specification, p. 22, lines 14-17.) A related product, termed a complementary good or service by economists, is related to another product because both are consumed or used jointly. (See, e.g., G. Stigler, PRICE THEORY, 4th Ed., pp. 28-30; a highly-regarded text by a Nobel laureate in economics). An oft-used example of complementary goods is ham and eggs. Gardenswartz's mode of classifying a consumer as, for example, a "snacker" or consumer of so-called junk foods may suggest that the consumer is likely to purchase chips, but it does not provide any indication as to whether the consumer

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jointly consumes colas or beer with the chips, or whether the consumer jointly consumes salsa or dip with the chips.

Moreover, Gardenswartz's identification of a consumer's preference for one brand of cola over another – what an economist would term substitute goods – is even farther removed from Applicants' invention. Identifying brand loyalty for a particular product provides no indication of which related goods, or complements, that the consumer consumes or uses jointly with the particular branded good.

Deaton also fails to teach or suggest the identifying of one or more potential consumers who have purchased at least one related product that is a complement to a merchant-specified product, wherein the identifying step is based on consumer purchase information read with a third-party remote shopping stimulation system. Deaton is directed to a method of promoting customer purchases within a particular store or over the Internet. (See, e.g., Col. 1, line 53 - Col. 2, line 13; see also Abstract.) Similar to Gardenswartz, Deaton rewards a customer whose purchases exceed a certain threshold by applying a "marginal discount" on each item the consumer purchases.

Deaton explicitly discusses tracking a consumer's purchase history of a product, coffee, to determine whether or not "the customer would have had time to at least partially consume the amount previously bought." (Col. 118, lines 52-65.) Deaton, however, does not relate the purchase on one product to a related, or complementary, product, as recited in amended independent Claim 1; Deaton, in describing the tracking of a consumer's coffee purchases, does not teach or suggest anything about using such tracking to identify potential purchasers of cream.

The only reference Deaton makes to tying promotional efforts to different goods is in the context of using a discount on one good as a way to "incent" consumers to visit an *unrelated* department of the same store. Specifically, Deaton describes promotional cost

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sharing between a retailer and a manufacturer, whereby a "manufacturer of ham" agrees to "reduce the cost of ham, and the retailer agrees to pay for the other half of the ham if the customer will come to the [retailer's] pharmacy." Deaton's arrangement, however, suggests nothing about targeting customers whose purchases of one product indicate a propensity to purchase certain complementary goods. Ham and eggs are complementary goods, but ham and pharmacy products are not.

The combination of Gardenswartz and Deaton, accordingly, fails to teach or suggest every feature recited in independent Claim 1, as amended. Applicants respectfully maintain, therefore, that amended independent Claim 1 and Claims 2-9, which each depend from Claim 1 while reciting additional features, define over the prior art.

Claims 10-15

Independent Claim 10, as amended, is directed to a system for providing promotional material to consumers. One recited feature of the promotional system is a merchant inventory management system that is configured to track and statistically establish the norm of an inventory level of at least one merchant-specified product. The inventory level norm is based on shipments received and sales made by the merchant of the at least one merchant-specified product.

Another recited feature of the promotional system is a shopping stimulation logic unit in communication with the merchant inventory management system. The shopping stimulation logic unit is configured to detect a business necessity of the merchant and to identify one or more potential consumers of the at least one merchant-specified product in response to detecting the business necessity. (See, e.g., Specification, p. 14, line 19 – p. 15, line 8 and p. 16, lines 18-20.) A business necessity is detected by the logic unit when the inventory level of the at least one merchant-specified product deviates from the

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established norm by more than a pre-selected threshold. (See, e.g., Specification, p. 17, lines 20-22.)

Gardenswartz and Deaton are focused exclusively on tracking certain types of consumer purchases. Consumer purchases must be tracked to determine a consumer's eligibility for a "value contract" or "marginal discount." A merchant's inventory, however, is irrelevant to the determination of whether a consumer, based on the consumer's purchases, is entitled to receive a value contract or marginal discount. Not surprisingly, therefore, even though both references disclose tracking of certain types of consumer purchases, neither suggests anything about tracking a merchant's inventory, as recited in amended independent Claim 10. In particular, neither Gardenswartz nor Deaton teach or suggest identifying one or more potential consumers of a merchant-specified product in response to detecting whether an inventory level of the merchant-specified product deviates from the established norm by more than a pre-selected threshold, as explicitly recited in amended independent Claim 10.

Accordingly, neither Gardenswartz nor Deaton, alone or in combination, teach or suggest every feature recited in independent Claim 10, as amended. Applicants respectfully assert, therefore, that amended independent Claim 10 and dependent Claims 11-15 each define over the prior art.

Claims 16-24

Amended independent Claim 16 is directed to a computer-implemented method of providing promotional information to consumers. The method includes reading consumer purchase information from a plurality of merchant computer systems with a third-party remote shopping stimulation system. The consumer purchase information that is read comprises consumer identifying information and product information. According to the method, the end of a merchant-specified product's life-cycle is determined and, in

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response thereto, one or more potential consumers of the at least one merchant-specified product is determined.

As is widely recognized, a product's "life-cycle" is distinct from and independent of a product's "expiration date." (See, e.g., Specification, p. 11, line 16 - p. 12, line 6; and p. 22, lines 18-21.) A product such as a gallon of milk typically carries an expiration date after which the product, because of possible spoilage, can not be legitimately sold by a merchant. A product such as a software package or fashionable clothing does not spoil. Nonetheless, many products, such as software and clothing, which have no expiration date, nonetheless have a finite life-cycle. The life-cycle of such products can end because of changing fashion, consumer tastes, or the introduction of product upgrades. (Specification, p. 11, line 16 - p. 12, line 6; and p. 22, line 18 - p. 23, line 3.) It is purchasers of just such products that are targeted according to the steps recited in amended independent Claim 16.

At page 5 of the Office Action, it is acknowledged that Gardenswartz does not disclose such features, but it is stated that it would have been obvious to combine Gardenswartz with Deaton, which discloses the use of "a consumer's consumption rate to target advertisements" to consumers. Deaton's consumer consumption rate, however, has nothing to do with a product's life-cycle. A product's life-cycle depends on product-specific factors, whereas Deaton's consumption rate is based on consumer-specific factors. Indeed, Deaton states that the consumption rate is a refinement of traditional buying cycle determinations precisely because it takes into account consumer-specific factors. As Deaton points out, a consumer who is the mother of seven has a different consumption rate for clothes washing detergent than does a single-person household. (Col. 100, line 30 - Col. 101, line 12.)

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Deaton's accounting for consumer-specific factors, however, indicates nothing about a product's life-cycle. Consumer-specific factors in no way determine whether a product used by the consumer is due to be upgraded, soon to compete with a more innovative product, or otherwise about to become obsolete. Knowing that a consumer is the head of a large household may indicate the quantity of detergent the consumer is likely to purchase over a given time period, but it indicates nothing about whether the software used by the household has been or is about to be upgraded. So, too, consumer-specific factors such as the size of the consumer's household in no way determines whether the clothing worn by members of the household are or soon will be out of fashion. Thus, Deaton's consumption rate has nothing to do with a product's life-cycle. Deaton's consumption rate is consumer-specific, but a consumer's characteristics are wholly unrelated to the life-cycles of products the consumer purchases.

It follows that, even when Gardenswartz is combined with Deaton, the combination fails to teach or suggest every feature of independent Claim 16, as amended. In particular, the combination fails to teach or suggest determining the end of a merchant-specified product's life-cycle and, in response thereto, determining one or more potential consumers of the at least one merchant-specified product who should be the target of promotional material, as recited in amended independent Claim 16.

Accordingly, Gardenswartz and Deaton, alone and in combination, fail to teach or suggest every feature of amended independent Claim 16. Applicants respectfully maintain, therefore, that amended independent Claim 16 as well as dependent Claims 17-24, which depend from Claim 16 while reciting additional features, each define over the prior art.

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CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. The Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

Date: December 27, 2005

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